D.B. Civil Writ Petition No.13/1994

Balchandra Prabhudas
Vs.
The Hon'ble High Court of Rajasthan,Jodhpur

Date of Order :: 10-07-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHD. RAFIQ

None present.

Neither the petitioner in person nor any counsel for him is present in Court when the case is taken up. The writ petition has been filed in person and in the ordinary course, we should have postponed the disposal and issued notice to the petitioner to either appear in person or appoint an advocate but for reason indicated below, it is not necessary to take that course.

The petition has been filed challenging the validity of Rule 381 of the Rajasthan High Court Rules, 1952. The Rule runs as under:-

> "An application made under this Chapter shall be made by an Advocate and not by the party personally."

It may be mentioned that the rule occurs in Chapter XXII titled as under-

> "Direction, Order or Writ under Article 226 of the Constitution of India other than a Writ in the nature o Habeas Corpus"

The case of the petitioner is that in terms of Rule 1 of Order III of the Code of Civil Procedure, it is open to the party to appear either in person or by recognised Agent or by Pleader, and therefore, he has a right to file writ petition himself seeking direction, order or writ, besides writ in the nature of habeas corpus, under Article 226 of the Constitution of India, and the rule being in conflict with Rule 1 of Order III of the CPC is bad in law.

The grievance, if we may say so, is academic in nature. Notwithstanding rule 381, parties are filing writ petitions and arguing their cases in person seeking direction, order or writ other than in the nature of habeas corpus without restriction. That apart, the academic question raised by the petitioner also does not appear to have much substance. Clause 46 of the Rajasthan High Court Ordinance, 1949 under which the Rajasthan High Court has been established empowers the High Court to frame rules, inter alia to regulate the practice of the Court. Article 225 of the Constitution provides for continuance of rules of the Court in force immediately before commencement of the Constitution.

From a reading of Clause 46 of the Ordinance it is evident that the High Court has power to frame rules in regard to practices of the Court among other things and Rule 381 cannot be said to be an invalid piece of legislation.

As a matter of fact, explaining the scope of rule 381, a learned Judge of this Court in Nand Lal Sharma Vs. State of Rajasthan, 1982 RLW 631 held that the bar contained in the rule applies only where petition has been filed through an advocate. It would be useful to quote the relevant passage from the judgment as under:

> "As regards the non-maintainability of the writ petition under rule 381 of the High Court Rules, it lays down that an application under Chapter XXII which deals with the writ petition under Article 226 of the Constitution of India other than a writ in the nature of habeas corpus shall be made by an advocate and not by the party personally. In my view this rule can only be applied in a case where an advocate is engaged by a party while filing a writ petition under Article 226 of the Constitution of India. It cannot apply to a case where a party does not engage an advocate and wants to file the petition himself. In such a case obviously the question of submitting such application by an advocate

> cannot arise. In my view there is no rule prohibiting a party himself to file a writ petition under Article 226 of the Constitution of India. In these circumstances if a petitioner himself files a writ petition without engaging an advocate then the presentation of the petition can also be made by the party himself. Thus, I find no force in this preliminary objection raised by the learned Government Advocate."

In the above premises, we do not find anything obnoxious in the rule so as to invite interference on judicial side. All said and done, as mentioned above, petition filed by the parties in person are entertained almost as a routine and whenever they so desire they are also heard in person and their appearance is accepted rendering the grievance infructuous.

In the result, we do not find any merit in the writ petition which is accordingly dismissed.

[MOHD. RAFIQ],J. [S.N.JHA],CJ.

Praveen